

FORM PTO-1083

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SEP 14 2005

 Attorney Docket No.: 101.0042-05000
 Customer No. 22882

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Gary Karlin Michelson, M.D.

Serial No: 10/098,683

Filed: March 15, 2002

**For: SPINAL IMPLANT CONTAINING
BONE MORPHOGENETIC PROTEIN**

Confirmation No.: 7210

Art Unit: 3731

Examiner: Uyen T. Ho

Mail Stop AMENDMENT
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

Dear Sir:

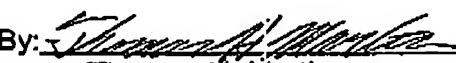
Transmitted herewith is a reply to the Office Action of April 12, 2005 in the above-identified application.

- No additional fee is required.
- Applicant hereby requests a three-month extension of time to respond to the above Office Action.
- A fee in the total amount of \$1,020.00 to cover the three-month extension of time fee is to be charged to Deposit Account No. 50-1068.
- The Commissioner is hereby authorized to charge any deficiencies of fees associated with this communication or credit any overpayment to Deposit Account No. 50-1068. A copy of this sheet is enclosed.
 - Any filing fees under 37 C.F.R. § 1.16 for the presentation of extra claims
 - Any patent application processing fees under 37 C.F.R. § 1.17

09/15/2005 HGUTERAI 00000047 501068 10098683

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1.00 DA

 Respectfully submitted,
 MARTIN & FERRARO, LLP
By: 
 Thomas H. Martin
 Registration No. 34,383

10098683

Date: September 14, 2005

 1557 Lake O'Pines Street, NE
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SEP 14 2005

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FACSIMILE TRANSMITTAL

TO:

Name: Mail Stop AMENDMENT
Group Art Unit 3731/Examiner Uyen Ho

Firm: U.S. Patent & Trademark Office

Fax No.: 571-273-4702

Subject: U.S. Patent Application No. 10/098,683
Gary Karlin Michelson
Filed: March 15, 2002
SPINAL IMPLANT CONTAINING BONE
MORPHOGENETIC PROTEIN
Attorney Docket No. 101.0042-05000
Customer No. 22882
Confirmation No.: 7210

FROM:

Name: Thomas H. Martin, Esq.

Phone No.: 330-877-2277

No. of Pages (including this): 5

Date: September 14, 2005

Confirmation Copy to Follow: NO

Message:

CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8

I hereby certify that the attached Transmittal Form (in duplicate; \$1,020.00 total amount to cover the three-month extension fee is to be charged to Deposit Account No. 50-1068) and Reply to Office Action are being facsimile transmitted to the U.S. Patent and Trademark Office on September 14, 2005.

Sandra L. Blackmon

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FORM PTO-1083

SEP 14 2005

Attorney Docket No.: 101.0042-05000
Customer No. 22882

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Gary Karlin Michelson, M.D.

Serial No: 10/098,683

Filed: March 15, 2002

For: SPINAL IMPLANT CONTAINING
BONE MORPHOGENETIC PROTEIN

Confirmation No.: 7:210

Art Unit: 3731

Examiner: Uyen T. Ho

Mail Stop AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

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Any filing fees under 37 C.F.R. § 1.16 for the presentation of extra claims

Any patent application processing fees under 37 C.F.R. § 1.17

Respectfully submitted,
MARTIN & FERRARO, LLP

Date: September 14, 2005

By: 
Thomas H. Martin
Registration No. 34,383

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PATENT
Attorney Docket No. 101.0042-05000
Customer No. 22882

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:) Confirmation No.: 7210
Gary Karlin Michelson)
Serial No.: 10/098,683) Group Art Unit: 3731
Filed: March 15, 2002) Examiner: Uyen T. Ho
For: SPINAL IMPLANT CONTAINING)
BONE MORPHOGENETIC)
PROTEIN)

Mail Stop AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REPLY TO OFFICE ACTION

In reply to the Office Action dated April 12, 2005, the period for reply having been extended for three (3) months by a request for extension and fee payment filed concurrently herewith, the following remarks are submitted.

In the Office Action, the Examiner rejected claims 54-103 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,026,373 to Ray et al. ("Ray"). Independent claim 54 recites an implant with a trailing end having a rear wall between the upper and lower portions, "said rear wall being integrally formed with said upper and lower portions of said implant." Ray teaches a fusion cage 10 that is adapted to "threadably receive an end cap 16." (Ray, col. 7, lines 24-27; Fig. 1). Ray does not teach or suggest an implant with a trailing end that is "integrally formed with said upper and lower portions of said implant" as recited in independent claim 54.

Independent claim 79 recites that the trailing end is "adapted so as to be connectable to another interbody spinal implant having a trailing end adapted to be connected to said interbody spinal fusion implant." The trailing end of the fusion cage taught by Ray is not adapted to be connected to another spinal implant as recited in independent claim 79 of Applicant's claimed invention. (See, e.g., Ray, Fig. 1).

Reply to Office Action 9-14-05.doc